

**FILED****SEP 29 2010**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:

CREEKSIDE VINEYARDS,  
Debtor.

Case No. 02-30522-B-11

KATHLEEN LAGORIO JANSSEN, et  
al.,

Plaintiffs,

Adv. No. 09-02085-B

vs.

DAVID A. HIRSCH, et al.,  
Respondent(s).

**MEMORANDUM DECISION**

Plaintiffs Kathleen Lagorio Janssen, Chris Lagorio and Joseph Dondero (collectively, the "Plaintiffs") commenced this adversary proceeding by the filing of a complaint on February 2, 2009. On August 14, 2009, defendants David Hirsch and Donald Hirsch (collectively, the "Defendants"), filed a Motion to Withdraw Reference (the "Withdrawal Motion") pursuant to 28 U.S.C. § 157 in the above-captioned adversary proceeding. The Withdrawal Motion was transmitted to the United States District Court for the Eastern District of California, Sacramento Division on August 19, 2009. On October 16, 2009, the District Court,

1 Judge William B. Shubb presiding, issued its Memorandum and Order  
2 Re: Motion to Withdraw Reference denying the Withdrawal Motion  
3 without prejudice. The District Court's memorandum decision  
4 stated that the District Court declined to exercise its  
5 discretion to permissively withdraw the reference until the  
6 bankruptcy court made an initial determination of whether this  
7 adversary proceeding is a "core" proceeding as that term is  
8 defined in 28 U.S.C. § 157, or whether this adversary proceeding  
9 is "non-core."

10 Pursuant to 28 U.S.C. § 157(b)(3), a bankruptcy judge may  
11 determine whether a proceeding is core or non-core on the judge's  
12 own motion. This memorandum decision constitutes the court's  
13 determination as to whether this action is core or non-core.

14 The following constitutes the court's findings of fact and  
15 conclusions of law pursuant to Fed. R. Bankr. P. 7052.

#### 16 I. FACTS

17 The Complaint filed by Plaintiffs (the "Complaint") alleges  
18 a single claim for injunctive relief that seeks to enjoin the  
19 Defendants from continuing to prosecute Hirsch, etc., et al. v.  
20 Janssen, et al. San Joaquin County Superior Court case no.  
21 CV26757 (the "State Court Action"). The Complaint alleges that  
22 this adversary proceeding is a core proceeding pursuant to 28  
23 U.S.C. § 157(b)(2)(A) and (O) as a matter concerning the  
24 administration of the estate or as a proceeding affecting the  
25 liquidation of the assets of the estate or the adjustment of the  
26 debtor-creditor or the equity security holder relationship.

1 The complaint in the State Court Action (the "State Court  
2 Complaint") sets forth five enumerated claims for relief for  
3 breach of fiduciary duty, conspiracy to commit breach of  
4 fiduciary duty and breach of contract, intentional infliction of  
5 emotional distress, breach of California Corporations Code § 309,  
6 and violation of 18 U.S.C. § 154.

7 The State Court Complaint alleges that Plaintiffs breached  
8 or conspired to breach their fiduciary duty to Defendants by  
9 improperly and unlawfully usurping control of Creekside  
10 Vineyards, Inc. ("Creekside"), a closely held corporation in  
11 which both Plaintiffs and Defendants were shareholders, prior to  
12 the filing of Creekside's bankruptcy case on September 20, 2002.  
13 (Dkt. 51 at 5-6). Creekside is the general partner of a  
14 Creekside Vineyards, LP, ("Creekside LP") a limited partnership.  
15 (Dkt. 51 at 3). The State Court Complaint also alleges that  
16 Plaintiffs, after usurping control of Creekside, breached their  
17 fiduciary duties to Defendants by manufacturing a financial  
18 crisis for Creekside and then commencing Chapter 11 bankruptcy  
19 cases for both Creekside and Creekside LP as a means of  
20 preventing Defendants from continuing to prosecute state court  
21 litigation by which they sought to regain control of Creekside  
22 (Dkt. 51 at 6-9).

23 The State Court complaint also alleges improper conduct by  
24 Plaintiffs in the Creekside and Creekside LP bankruptcy cases  
25 which constituted an alleged breach of Plaintiffs' fiduciary  
26 duties to Defendants. The alleged improper conduct included  
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1 entry into a compromise (the "Compromise") between Creekside LP  
2 and Creekside LP's landlord regarding Creekside LP's lease (the  
3 "Lease") of approximately 1,300 acres of agricultural land used  
4 for growing grapes, which Compromise was allegedly entered into  
5 for the sole purpose of perpetuating Plaintiffs' control of  
6 Creekside and Creekside LP. The Compromise was approved by the  
7 bankruptcy court. (Dkt. 51 at 10). The State Court Complaint  
8 also alleges that Plaintiffs breached their fiduciary duties to  
9 Defendants by seeking authorization in the bankruptcy court to  
10 sell Creekside LP's rights under the Lease to an entity  
11 controlled by Plaintiffs as a means of perpetuating Plaintiffs'  
12 control of and depriving Defendants of control of the Creekside  
13 LP's rights under the Lease, allegedly Creekside's most valuable  
14 asset. (Dkt. 51 at 10-11). The State Court Complaint alleges  
15 that the Plaintiffs' "rigged" the sale that was ultimately  
16 approved by the bankruptcy court. (Dkt. 51 at 11, 13).

17 The State Court Complaint also alleges that the Plaintiffs  
18 engaged in a scheme to deny Defendants of income received by  
19 Creekside by applying the income received since August 14, 2001  
20 to the reduction of Creekside's debt obligations, rather than  
21 continuing a practice of distributing income to Creekside's  
22 shareholders, including Defendants. (Dkt. 51 at 11).

23 The State Court Complaint also alleges that the Plaintiffs  
24 violated the statutory duty imposed by California Corporations  
25 Code § 309 to perform their duties as directors of Creekside in  
26 good faith and in the best interests of Creekside and its  
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1 shareholders. (Dkt. 51 at 14-15).

2 The State Court Complaint also alleges that Plaintiff  
3 Kathleen Janssen's purchase of the Lease through an entity  
4 allegedly controlled by herself and the other Plaintiffs  
5 constitutes a violation of 18 U.S.C. § 154. (Dkt. 51 at 16-17).

## 6 **II. ANALYSIS**

### 7 A. Core and Noncore Matters - Applicable Law

8 Pursuant to 28 U.S.C. § 157(b)(1), "[b]ankruptcy judges may  
9 hear and determine all cases arising under title 11 or arising in  
10 or related to a case under title 11, referred under subsection  
11 (a) of this section, and may enter appropriate orders and  
12 judgments, subject to review under section 158 of this title."

13 "[C]laims that arise under or in Title 11 are deemed to be  
14 'core' proceedings, while claims that are related to Title 11 are  
15 'noncore' proceedings." In re Harris Pine Mills, 44 F.3d 1431,  
16 1435 (9th Cir. 1995). Claims that arise under Title 11 are those  
17 that involve a cause of action created or determined by a  
18 statutory provision of Title 11. Id., citing In re Wood, 825  
19 F.2d 90, 96-97 (5th Cir. 1987). Claims that arise in Title 11  
20 are " 'administrative' matters that arise solely in bankruptcy  
21 cases . . . [They] are not based on any right expressly created  
22 by Title 11, but nevertheless, would have no existence outside of  
23 the bankruptcy." Wood, 825 F.2d at 97.

24 28 U.S.C. §§ 157(b)(2)(A)-(O) set forth a non-exhaustive  
25 list of fifteen types of proceedings that qualify as core  
26 proceedings. Collier divides the fifteen types into four  
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1 categories: (a) Matters of administration, (b) avoidance  
2 actions, (c) property of the estate and (d) the "omnibus  
3 categories of core proceedings." Collier places in category (a),  
4 inter alia, "all matters concerning the administration of the  
5 estate" (§ 157(b)(2)(A)) and in category (d), "other proceedings  
6 affecting the liquidation of the assets of the estate or the  
7 adjustment of the debtor-creditor or the equity security holder  
8 relationship, except personal injury or wrongful death claims" (§  
9 157(b)(2)(O)). Harris Pine Mills describes the foregoing types of  
10 proceedings under §§ 157(b)(2)(A) and (O) as "catch-all  
11 provisions," but points out that in the Ninth Circuit, "state  
12 law and contract claims that do not specifically fall within the  
13 categories of core proceedings enumerated in 28 U.S.C. §  
14 157(b)(2)(B)-(N) are related proceedings even if they arguably  
15 fit within the literal wording of the two catch-all provisions.'" Harris Pine Mills, 44 F.3d at 1436-37 (quoting Piombo Corp. v.  
16 Castlerock Properties (In re Castlerock), 781 F.2d 159, (9th Cir.  
17 1986)).

18  
19 Claims that are merely "related to" a case under title 11,  
20 are, generally speaking, those claims that are owned by the  
21 debtor at the time the petition is filed and that become part of  
22 the estate pursuant to 11 U.S.C. § 541(a). They may also include  
23 proceedings that take place between third parties. See 1  
24 Lawrence P. King, et al., Collier on Bankruptcy, § 3.01[3][c]  
25 (15th Ed. rev. 2010). The Ninth Circuit has concluded that a  
26 "related" proceeding is largely synonymous with a "non-core"  
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1 proceeding. See Benedor Corporation v. Conejo Enterprises, Inc.  
2 (In re Conejo Enterprises, Inc.), 71 F.3d 1460, 1464, n.3 (9th  
3 Cir. 1995). A non-core proceeding "'does not invoke a  
4 substantive right created by the federal bankruptcy law and is  
5 one that could exist outside of bankruptcy . . . .'" In re  
6 Harris Pine Mills, 44 F.3d at 1435 (quoting Wood, 825 F.2d at 96-  
7 97). A bankruptcy court has jurisdiction over a related  
8 proceeding when "the outcome of that proceeding could conceivably  
9 have any effect on the estate being administered in bankruptcy."  
10 Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). See  
11 also, In re Feitz, 852 F.2d 455, 457 (9th Cir. 1988).

12 Because the Complaint seeks an injunction preventing the  
13 State Court Action from going forward, this court cannot  
14 determine the core or noncore status of this adversary proceeding  
15 based merely on the nature of the relief sought in the Complaint.  
16 The court must instead analyze the State Court Complaint to  
17 determine whether the claims alleged in the State Court Complaint  
18 constitute core or noncore matters, as a claim in the Complaint  
19 to enjoin a core matter in the State Court Complaint would be a  
20 core matter for the purposes of the Complaint, and a claim in the  
21 Complaint to enjoin a noncore matter in the State Court Complaint  
22 would be a noncore matter for the purposes of the Complaint. As  
23 set forth in more detail herein, the court finds that the  
24 Complaint in this adversary proceeding involves both core and  
25 noncore matters.

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1                    B. The State Court Complaint

2            In the instant case it is difficult to determine the core or  
3 non-core status of the enumerated claims for relief set forth in  
4 State Court Complaint due to the manner in which it is pled, as  
5 each successive claim pled in the State Court Complaint  
6 incorporates all of the allegations contained in the preceding  
7 claims for relief. The State Court Complaint pleads a series of  
8 "Background Facts" prior to the enumerated claims for relief, but  
9 then incorporates all of the "Background Facts" by reference into  
10 the first claim for relief for breach of fiduciary duty, in  
11 addition to pleading additional factual allegations under the  
12 first claim for relief. All factual allegations contained in the  
13 Background Facts and under the first claim for relief are then  
14 incorporated by reference under the second claim for relief for  
15 conspiracy to breach fiduciary duty and contract. This pattern  
16 is repeated for the third, fourth and fifth claims for relief,  
17 such that the fifth claim for relief for breach of 18 U.S.C. §  
18 154 incorporates all allegations set forth under the Background  
19 Facts as well as the first four claims for relief, whether such  
20 allegations would be relevant to satisfying the elements of a  
21 claim under 18 U.S.C. § 154 or not.

22            As a result, rather than proceed to determine the core or  
23 noncore status of each of the five enumerated claims for relief  
24 set forth in the State Court Complaint, the court must determine  
25 the core or noncore status of the claims set forth in the State  
26 Court Complaint based on the nature of the facts alleged, i.e.



1 the specific events alleged and the relationship of those events  
2 to the Bankruptcy Case.

3 i. The Fifth Claim for Relief in the  
4 State Court Complaint is a Core Proceeding

5 There is one exception to the foregoing approach. The only  
6 enumerated claim that the court can clearly identify as a core  
7 matter is the State Court Complaint's fifth claim for relief for  
8 violation of 18 U.S.C. § 154. That section imposes a penalty  
9 upon those persons who are custodians, trustees, marshals or  
10 other officers of the court who knowingly purchase property of  
11 the estate in which the person is an officer in a case under  
12 title 11, who knowingly refuse to permit reasonable inspection of  
13 documents and accounts in the person's charge, and who knowingly  
14 refuse to permit the United States trustee to inspect documents  
15 and accounts relating to the affairs of a bankruptcy estate in  
16 the person's charge.

17 This claim for relief, to the extent that it states a claim  
18 upon which relief may be granted to the Defendants<sup>1</sup>, is a core  
19 matter because it arises in a case under title 11. It is not  
20 based on any right expressly created by Title 11, but  
21 nevertheless, would have no existence outside of the bankruptcy,  
22 since the person upon whom the penalty is imposed must be an  
23 officer of property of a bankruptcy estate or a person in charge

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25 <sup>1</sup> 18 U.S.C. § 154 is a criminal statute. The Ninth Circuit  
26 has previously refused to apply its provisions to a civil case.  
27 See Donovan & Schuenke v. Sampsell, 226 F.2d 804, 808-807 (9th  
28 Cir. 1955).

1 of a bankruptcy estate.

2 ii. Allegations Related to Pre-Bankruptcy

3 Events are Noncore Matters

4 As to the other four claims for relief set forth in the  
5 State Court Complaint, the court first finds that allegations  
6 contained in the State Court Complaint related to events  
7 occurring prior to the filing of the petition commencing the  
8 Bankruptcy Case are non-core matters. Those matters specifically  
9 include allegations regarding the Plaintiffs' alleged usurpation  
10 of control of Creekside and Creekside LP, the Plaintiffs' alleged  
11 manufacturing of a financial crisis prior to the commencement of  
12 Creekside's and Creekside LP's Chapter 11 bankruptcy cases and  
13 the Plaintiffs' alleged denial of income from Creekside to  
14 Defendant shareholders (collectively, the "Pre-Bankruptcy  
15 Events"). To the extent that the Defendants allege that the Pre-  
16 Bankruptcy Events constitute a breach of fiduciary duty, a  
17 conspiracy to commit breach of fiduciary duty and breach of  
18 contract, intentional infliction of emotional distress, or breach  
19 of California Corporations Code § 309, such claims are based on  
20 state law and could have been maintained in a state court whether  
21 or not the Creekside or Creekside LP bankruptcy cases had been  
22 filed. Therefore, they are claims that are related to the  
23 bankruptcy cases and are noncore matters.

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1     iii. Matters that require the interpretation of bankruptcy  
2     proceedings or bankruptcy court orders or are based on the  
3     Bankruptcy Events are core matters

4     Allegations contained in the state court complaint relating  
5     to the filing of the petitions commencing the Creekside and  
6     Creekside LP bankruptcy cases or allegations that require an  
7     interpretation of a bankruptcy court order or proceedings are  
8     core matters. Such matters include the Defendants' allegations  
9     in the State Court Complaint relating to Plaintiffs' filing of  
10    the petitions commencing the Creekside and Creekside LP  
11    bankruptcy cases, the allegations relating to the Plaintiffs'  
12    authority to cause Creekside LP to enter into a compromise of the  
13    Lease that was approved by the bankruptcy court and the  
14    allegations that the Plaintiffs "rigged" the sale of the Lease  
15    from Creekside LP to an entity allegedly controlled by the  
16    Plaintiffs (collectively, the "Bankruptcy Events").


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18    To the extent that such allegations state claims upon which  
19    relief may be granted that would entitle the Defendants to  
20    relief, they are core matters because the claims for relief upon  
21    which would be supported by such allegations must be found, and  
22    therefore would arise under, the Bankruptcy Code. In the Ninth  
23    Circuit, the Ninth Circuit Court of Appeals has previously held  
24    that federal law preempts a bankruptcy debtor's action for  
25    malicious prosecution against a creditor. MSR Exploration, Ltd.  
26    v. Meridian Oil, Inc., 74 F.3d 910, 915 (9<sup>th</sup> Cir. 1996).  
27    Although the State Court Complaint does not allege facts

1 supporting a malicious prosecution action, the MSR court's  
2 rationale is useful to the court's analysis here. The MSR court  
3 reasoned that, as an initial matter, Congress expressed its  
4 intent that bankruptcy matters be handled in a federal forum by  
5 giving the district courts exclusive jurisdiction over bankruptcy  
6 proceedings. The MSR court also reasoned that the "complex,  
7 detailed and comprehensive provisions of the lengthy Bankruptcy  
8 Code . . . demonstrates Congress's intent to create a whole  
9 system under federal control which is designed to bring together  
10 and adjust all of the rights and duties of creditors and  
11 embarrassed debtors alike." MSR, 74 F.3d at 914. The MSR court  
12 further reasoned that because the Bankruptcy Code already  
13 provided a comprehensive scheme for the adjustment of the rights  
14 of debtors and creditors in a bankruptcy case, and because the  
15 Code also provided a complete and detailed set of remedies to  
16 address creditor misconduct, the malicious prosecution action was  
17 completely preempted by federal law.

18 The same reasoning applies in this case. The allegations  
19 based on the Bankruptcy Events, are allegations of wrongdoing by  
20 Plaintiffs in the Creekside and Creekside LP bankruptcy cases.  
21 The Bankruptcy Code provides a scheme of remedies for such  
22 conduct. As a result, to the extent that the State Court  
23 Complaint alleges that such conduct constitutes constitute a  
24 breach of fiduciary duty, a conspiracy to commit breach of  
25 fiduciary duty and breach of contract, intentional infliction of  
26 emotional distress, or breach of California Corporations Code §  
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1 309, those state law claims are federally preempted by the  
2 Bankruptcy Code. Therefore, to the extent that the Defendants  
3 seek redress for their claims based on the Bankruptcy Events, it  
4 must be found in causes of action provided by the Bankruptcy  
5 Code. Any claims for relief that Defendants might assert based  
6 on those allegations would therefore arise under title 11 and  
7 would be core matters.

8  
9 Dated: SEP 29 2010



10 Thomas C. Holman

11 United States Bankruptcy Judge  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Andrea T. Porter  
150 Spear Street #1600  
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Robert D. Nelson  
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DATED: 9/29/10

By:

Melissa McIntosh  
Deputy Clerk

Melissa McIntosh

EDC 3-070 (New 4/21/00)